IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: **591 of 2002.**

Reserved on: **28.05.2007.**

Decided on: **13.07.2007.**

Smt. Kindri Devi … … … **Petitioner.**

Versus

H.P.S.E.B. and Another … … … **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner: **Mr. Bipin C. Negi, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner's husband late Shri Laiq Ram came in contact with a live electric wire resulting in his death on 23.6.2001. The Medical Officer, Ayurvedic Health Centre, Dhar Chandna, District Shimla had issued medical certificate dated 29.6.2001 stating there in that Shri Laiq Ram had died due to electrocution. The entry was also made in the Rapat Roznamcha by the Patwari, Dhar Chandna, District Shimla on 18th July, 2001 to the effect that Shri Laiq Ram had expired on 23rd June, 2001 due to electric shock. The family of the deceased Shri Laiq Ram had also informed the police authorities at Police Post,

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Whether reporters of local papers may be allowed to see the judgment? Yes.

Kupvi that Shri Laiq Ram had died due to electric shock. The A.S.I. Hari Singh, Police Post, Kupvi had sent this information to the Police Station, Chopal. The Gram Panchayat, Dhar Chandna had passed a resolution, the copy of which was sent to the Chief Minister, Deputy Commissioner and M.L.A. seeking compensation. The S.D.M., Chopal had informed the Chief Electrical Inspector on 14th August, 2001 about the accident dated 23rd June, 2001 resulting in the death of Shri Laiq Ram due to electric shock. The Pradhan, Gram Panchayat, Dhar Chandna, Sub Tehsil Kupvi, District Shimla had certified that he had inspected the spot in the presence of Shri Kedar Singh, T. Mate on 27.6.2001 and it was found that the height of the pole was 4 ½ meters and the height of the wire was 5 feet. The legal notice was also served upon the respondents-Board on 4th August, 2001 seeking compensation. The copies of the photographs have been placed on record for visual impression to substantiate that the electric wires were hanging precariously.

Mr. Bipin Negi had strenuously argued that Shri Laiq Ram had died due to the negligence of the Board. Mr. Negi had submitted that it is a fit case where principle of **"res-ipsa-loquitur"** will apply. Mr. Shrawan Dogra had strenuously argued that the petitioner cannot be granted compensation in writ jurisdiction and the petitioner should have filed a civil suit in the Court of competent jurisdiction.

I have heard the parties and gone through the record.

The scenario which emerges from the above stated facts is that late Shri Laiq Ram had died due to electrocution on 23.6.2001. The Medical Officer, Ayurvedic Health Centre, Dhar Chandna had certified that Shri Laiq Ram had died due to electric shock. The Patwari, Dhar Chandna had made an entry in the Rapat Roznamcha about the death of Shri Laiq Ram due to electrocution. The A.S.I. Hari Singh had also

informed the Police Station, Chopal about the death of Shri Laiq Ram due to electric shock. He had specifically mentioned in his report that he had recorded the statements of the witnesses who have testified that Shri Laiq Ram had died due to electric shock. The Gram Panchayat had passed a unanimous resolution on 7.7.2001 calling upon the authorities to pay compensation to the family members of late Shri Laiq Ram. The S.D.M., Chopal had sent communication to the Chief Electrical Inspector on 14th August, 2001 specifically mentioning there in that Laiq Ram had died due to electric shock. He had annexed the copies of the certificate of Gram Panchayat and the medical officer certifying the death of Shri Laiq Ram. The Chief Electrical Inspector though legally bound to take action after the receipt of the letter dated 14th August, 2001 had not conducted any inquiry. The Pradhan had certified that the height of the wires was about 5 feet. This fact is also apparent from the photographs, placed on record of this case. It is evident from the combined reading of all the annexures filed with this petitioner, more particularly, the certificate issued by the Medical Officer, Ayurvedic Health Centre, Dhar Chandna, the report sent by the A.S.I., Police Post, Kupvi, Police Station, Chopal, the resolution passed by the Gram Panchayat on 7.7.2001, the letter sent by the S.D.M., Chopal on 14th August, 2001 that Laiq Ram had died due to electric shock. It was incumbent upon the Board to maintain the height of the wires prescribed as per Rule 91 of the Indian Electricity Rules, 1956, which reads as under:-

> **"91. Safety and protective devices.-(1) Every overhead line, (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers' premises shall be protected with a device**

approved by the Inspector for rendering the line Electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule(1).

[(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the supports of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I-sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule.]

Shri Laiq Ram, had gone to his fields, but had come in contact with live electric wire which was precariously hanging at the height of 5 feet. There was no occasion for him to fiddle with the electric wire as stated in the reply. A man of reasonable prudence knows the consequences of the touching the live electric wire. A news item had also appeared in the daily edition of Himachal Times, dated 10th July, 2002 under the caption “Keeping danger alive … live wires passing through Shimla orchards.”

The Chief Electrical Inspector was bound to hold an inquiry after the receipt of communication sent by the S.D.M., Chopal. Section 36 of the Indian Electricity Act, 1910 provides for the appointment of Electrical Inspectors. The qualifications for the appointment of Inspectors are provided under Rule 4 of the Indian Electricity Rules, 1956. The State Government had already made

appointment of the Chief Electrical Inspector under Section 36 of the Indian Electricity Act, 1910. Section 33 of the Indian Electricity Act reads as under:-

> **"33. Notice of accidents and inquiries. - [(1) If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply - lines or other works of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector and to such other authorities as the appropriate Government may by general or special order, direct.]**
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> **(2) [The appropriate Government] may, if it thinks fit, require any [Electrical Inspector], or any other competent person appointed by it in this behalf, to inquire and report –**
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> **(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, supply or use of energy, or**
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> **(b) as to the manner in, and extent to, which the provisions of this Act or of any licence or rules thereunder, so far as those provisions affect the safety or any person, have been complied with.**
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> **[(3) Every Electrical Inspector or other person holding an inquiry under sub-section (2) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of**

enforcing the attendance of witnesses and compelling the production of documents and material objects; and every person required by an Electrical Inspector or such other person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of Section 176 of the Indian Penal Code (45 of 1860)].”

Rule 44 A of the Indian Electricity Rules, 1956 reads as under:-

“[44A. Intimation of Accident. – If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply lines or other works of any person and the accident results in or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person or any authorised person of the State Electricity Board/Supplier, not below the rank of a Junior Engineer or equivalent shall send to the Inspector a telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and written report in the form set out in Annexure XIII within 48 hours of the knowledge of occurrence of fatal and all other accidents. Where practicable a telephonic message should also be given to the Inspector immediately the accident comes to the knowledge of the authorised officer of the State Electricity Board/Supplier or other person concerned.]”

It is evident from the combined reading of the provisions as mentioned hereinabove of the Indian Electricity Act, 1910 read with the Indian Electricity Rules, 1956 that it was incumbent upon functionaries of the Board to inform about the accident to the Chief Electrical Inspector in telegraphic report within 24 hours of the knowledge of the occurrence of the fatal accident and a written report

in the form set out in Annexure-XIII within 48 hours of the knowledge of the occurrence of the fatal accident or others.

The S.D.M., Chopal had sent the report to the Chief Electrical Inspector on 14the August, 2001 though the death has taken place on 23rd June, 2001. It can safely be presumed that the death of Shri Laiq Ram was within the knowledge of the functionaries of the Board and it was mandatory on their part, more particularly, the Junior Engineer to inform the Inspector of the accident within 24 hours in telegraphic manner and in a written report within 48 hours. The authorities of the Board including the Secretary, Superintending Engineer, Executive Engineer, Assistant Engineer, and Junior Engineer were informed of the accident which took place on 23rd June, 2001 when a legal notice was served upon them by the petitioner's Advocate Shri Rajinder S. Negi. The authorities were bound to act after the receipt of the information from the office of the S.D.M., Chopal, dated 14th August, 2001 as well as on the basis of the notice dated 4.8.2001. The Board had admitted in its reply the receipt of notice dated 4th August, 2001. Accordingly, this court is of the firm opinion that the Chief Electrical Inspector despite the knowledge of the incident dated 23rd June, 2001 did not hold any inquiry. The authorities as mentioned in the notice dated 4th August, 2001 after the receipt of the information through this notice were bound to inform the Chief Electrical Inspector, which admittedly has not been done by them.

The contention of Mr. Shrawan Dogra that the petitioner should have approached the civil Court for compensation can not be accepted at the stage of hearing. The present writ petition was filed on 23rd April, 2002 and was admitted on 19.8.2002. The petition thereafter is pending for hearing before this Court. This Court has held in the case titled as **Darshanu Ram and others versus Sub-**

Registrar and others, CWP No.1100 of 2002, decided on 16.5.2007 that if the petition is admitted and pending for a considerable period, the parties will not be relegated to avail the alternative remedy.

The contention of Mr. Shrawan Dogra that this Court has no jurisdiction to award the compensation/damages in its writ jurisdiction is no more res-integra in view of the law laid down by the Hon'ble Supreme Court and various High Courts as under:-

The Rajasthan High Court in **Rajasthan State Electricity Board and another V. Janta and others, 2001 ACJ 562** had awarded a sum of Rs.1,80,000/- towards compensation for the death of an agriculturist due to electrocution while cultivating his fields. The Hon'ble Single Judge has held as under:-

> **"Right to life and personal liberty is one of the most important fundamental rights. It is enshrined in Article 21 of the Constitution of India. No one can by any act or omission deprive any other person of his life or personal liberty unless such deprivation can be justified in accordance with the procedure established by the law. The duty, not to indulge in such act or omission as is likely to result in deprivation of life or personal liberty is implicit in fundamental rights under Article 21 of the Constitution of India. It is, therefore, the bounden duty of all those persons and authorities who intend to indulge in such act or omission as is likely to harm others to take sufficient care that they do not endanger the lives and personal liberty of others. The fundamental right under Article 21 of the Constitution of India does not admit of any exception other than the procedure established by law mentioned in Article 21 itself. Therefore, no one, who wants to escape the responsibility for causing loss of life or loss of personal liberty to any one, must prove that his case was within the exception recognised by law. If he fails to discharge this responsibility and it is established**

that death and harm to any person was the direct result of any act or omission then it will have to be inferred that the person who is responsible for such loss of life or harm was negligent in discharging the responsibility imposed by Article 21 of the Constitution of India. In Parvati Devi v. Commissioner of Police, Delhi, (2003) 3 SCC 754, it was observed by the Hon'ble Supreme Court that:

> **"The appellants moved the High Court of Delhi claiming compensation as the husband of the appellant No.1 died on account of electrocution while walking on the road. That the death was on account of electric shock is established in view of the CFSL report from Calcutta, but as the appellants could not produce relevant materials indicating the negligence of any particular officer of the authority, the High Court refused to award compensation. It is against this order, the present appeal has been filed. Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent and, therefore, in the case in hand, it would be N.D.M.C. who would be responsible for the death in question."**

The Division Bench of Hon'ble Delhi High Court in **Shyama Devi and others V. National Capital Territory of Delhi and others, 2001 ACJ 988** has held that where failure to perform the duties by the functionaries of the State resulting in deprivation of right to life attracting Article 21 of Constitution of India, the aggrieved party is entitled to invoke Article 226 to claim compensation. Their Lordships have opined as under:

> **"In the instant case, the heavy duty of care lay upon the State since an explosive device was kept in**

the Malkhana. As the device was not defused this duty of care was clearly breached by the State and its concerned officials. In such like cases the courts expect strict and high standard of care from them. When there is a failure to perform duty which results in physical injury, deprivation of life or loss of property, Article 21 of the Constitution is attracted and the aggrieved party is entitled to invoke Article 226 to claim monetary or pecuniary compensation as such a remedy is available in public law based on strict liability for breach of fundamental right. As held in Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645, Article 21 act as a shield against deprivation of life or personal liberty. Personal liberty and life have to be given expanded meaning. Though Article 21 is couched in negative terms, it also has a positive content. It contains a person's right to life and liberty. Concepts of the life and liberty were purposely not defined in the Constitution so that expanded meaning could be given in accordance with the march of time. Dereliction of duty on the part of the servants of the State resulting in loss of precious life would amount to violation of Article 21 of the Constitution and the State will be vicariously liable for their acts. In P.A. Narayanan v. Union of India, 1999 ACJ 374 (SC), the Supreme Court in an appeal arising from a writ petition held that dereliction of duty which results in loss of life renders the guarantee under Article 21 of the Constitution illusory. In that case the wife of the appellant lost her life while traveling in the first class railway compartment at the hands of dacoits. It was found that the incident exhibited negligence of the railway employees in the performance of their duties. The Supreme Court in the circumstances of that case, asked the Railway of pay a sum of Rs.2,00,000 as compensation to the appellant for the death of his wife. Therefore, it is too late in the day to contend that compensation for the tortious acts of the functionaries

and servants of the State can not be awarded in a writ petition. The myth was convincingly exploded in Nilabati Behera v. State of Orissa, 1993 ACJ 787 (SC), which was based upon the principles laid down in Bhagalpur Blinding Cases: Khatri (II) v. State of Bihar, (1981) 1 SCC 627; Khatri (IV) v. State of Bihar, (1981) 2 SCC 493 and Union Carbide Corporation v. Union of India, (1991) 4 SCC 584. In Nilabati Behera's case (supra), the Apex Court held that in a case of violation of fundamental rights by the State and its instrumentalities or servants the court can direct the State to pay monetary or pecuniary compensation to the victim. It also held that principle of sovereign immunity was inapplicable in such cases; a proceeding under Article 32 or 226 of the Constitution for award of compensation is a public law remedy as distinct from private law remedy; and the aggrieved party cannot be relegated to a civil suit. The observations of the Supreme Court in this regard are as follows:

> **"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights as guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the**

situation with a view to preserve and protect the Rule of Law. While concluding his First Hamlyn Lecture in 1949 under the title 'Freedom under the law', Lord Denning in his own style warned:

'No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things tat they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for negligence. This is not the task of Parliament, … the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised, the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country'."

The decision of the Apex Court in Nilabati Behera's case (supra) was followed in D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, where the Supreme Court held as under:

"(43) Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play.

For the violation of the fundamental right to life or the basic human rights, however, this court has taken the view that the defence or sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In Nilabati Behera v. State of Orissa (supra), the decision of this court in Kasturilal Ralia Ram Jain v. State of U.P., AIR 1965 SC 1039, wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus:

'In this context, it is sufficient to say that the decision of this court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the Constitutional scheme, and is no defence to the Constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this court in Rudul Sah, AIR 1983 SC 1086 and others in that line relate to award of compensation for contravention of fundamental rights, in the Constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to the value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for

compensation for violation of fundamental rights, Kasturilal is, therefore, inapplicable in this context and distinguishable.'

The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court

> **of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim, civil action for damages is along drawn and cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."**

The Apex Court has held in **M.S. Grewal and another V. Deep Chand Sood and others, 2001 ACJ 1719** that the law Courts exist for the society and they have an obligation to meet the social aspirations of citizens; and law courts must also respond to the needs of the people. Their Lordships have made the following observations:-

> **"Negligence in common parlance mean and imply 'failure to exercise due care, expected of a reasonable prudent person'. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. In most instances, it is caused by heedlessness or inadvertence, by which the negligent party is unaware of the results which may follow from his act. Negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and reasonable man would not do. [Vide Black's Law Dictionary]. Though sometimes, the work 'inadvertence' stands and used as a synonym to negligence, but in effect negligence represents a state of the mind which, however, is much serious in nature than mere inadvertence. There is thus existing a differentiation between the two expressions – whereas inadvertence is a milder form of negligence, 'negligence' by itself mean and imply a state of mind**

where there is no regard for duty or the supposed care and attention which one ought to bestow. Clerk & Lindsell on Torts, 18th Edn., sets out four requirements of the tort of negligence and the same read as below:

> **"(1) the existence in law of a duty of care situation, i.e., one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damage in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable;**
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> **(2) breach of the duty of care by the defendant, i.e., that it failed to measure up to the standard set by law;**
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> **(3) a casual connection between the defendant's careless conduct and the damage;**
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> **(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."**

While the parent owes his child, a duty of care in relation to the child's physical security, a teacher in a school is expected to show such care towards a child under his charge as would be exercised by a reasonably careful parent. In this context, reference may be made to a decision of Tucker, J. in Ricketts v. Erith Borough Council, (1943) 2 All ER 629, as also the decision of the Court of Appeal in Prince v. Gregory, (1959) 1 WLR 177.

Duty of care varies from situation to situation– whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school, may not be required in the same degree as is in the play-field. While it is true

that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to playground near a river for fun and swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken specially against the minor children stands at a much higher level than adults: children need much stricter care.

Incidentally, negligence is an independent tort and has its own strict elements specially in the matter of children – the liability is thus absolute vis-a-vis the children. The school authorities in the contextual facts attributed negligence to the two teachers who stand convicted under section 304-A of the Indian Penal Code as noticed above and Mr. Bahuguna appearing in support of the appeal during the course of hearing, however, also in no uncertain terms attributed utter negligence on the part of the teachers and thus conceded on the issue of negligence. Concession, if any, as noticed above, though undoubtedly a good gesture on the part of the school authority, but can the school absolve its responsibility and corresponding culpability in regard to the incident: Would they be termed to be joint tort-feasors or would it be a defence that the school has taken all due care having regard to its duty and it is irrespective thereof by reason of utter neglect and callous conduct on the part of the two of the teachers escorting them that has caused the injury. Mr. Bahuguna contended that the school cannot be made liable under any stretch of imagination by reason of the happening of an event which is not within the

school premises and has, in fact, happened by reasons of the neglect of two of the teachers. It is on this score that Mr. Malhotra rather emphatically contended that the liability cannot simply be obliterated by reason of plea of utter neglect on the part of the two of the teachers: school concerned can be said to be liable even as a joint tortfeasor and in any event, Mr. Malhotra contended that applicability of the doctrine of vicarious liability cannot be doubted or be brushed aside in any way whatsoever and since the issue of vicarious liability has been more emphatic and pronounced than the issue of joint tortfeasor, we deem it expedient to deal with the second of twin issues first as noticed above.

Be it noted that the doctrine of 'vicarious liability' has had a fair amount of judicial attention in the English Courts. By the end of 18th century, the idea began to grow up that some special importance ought to be attached to the relationship of master and servant and in 1849 it was officially held that existence of that relationship was essential. Thereafter, though primary liability on the part of anyone could be established on proof of direct participation in the tort, such direct participation was not even theoretically required to make a master liable for his servant's torts. The liability is derived from the relationship and is truly vicarious. At the same time, the phrase 'implied authority' which had been the cornerstone of the master's primary liability gives way gradually to the modern 'course of employment'. [vide Winfield & Jolowicz on Tort, 15th Edn.].

In recent years, the tendency has been, however, towards more liberal protection of third party and so in establishing a particular 'course of employment' the court should not dissect the employees basic task into component parts but should ask in a general sense: what was the job at which he was engaged for his

employer? And it is on this perspective Lord Wilberforce in Kooragang Investments Pty. Ltd. v. Richardson & Wrench Ltd., 1982 AC 462, stated:

> **"… Negligence is a method of performing an act: instead of it being done carefully, it is done negligently. So liability for negligent acts in the course of employment is clear. Cases of fraud present at first sight more difficulty: for if fraudulent acts are not directly forbidden, most relationships would carry an implied prohibition against them. If committed for the benefit of the employer and while doing his business, principle and logic demand that the employer should be held liable, and for some time the law rested at this point. The classic judgment of Willes, J. in Barwick v. English Joint Stock Bank, (1867) LR 2 Ex. 259, 266 stated the principle thus:**
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> **'In all these cases it may be said…that the master has not authorised the act. It is true, he has not authorised the particular act but he has put the agent in his place to do that class of acts and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in.'**
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> **There was a case where the wrong was committed for the master's (viz., the bank's) benefit and Willes, J. stated this as an ingredient of liability at p.265:**
>
> **' …the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved'."**

But a sharp distinction has been made as regards the group of cases which is concerned with the use of motor vehicles. These are the cases Lord Wilberforce observed:

> **"(i) where a servant has, without authority, permitted another person to drive the master's vehicle; (ii) where a servant has, without authority, invited another person on to the vehicle, who suffers injury; (iii) where a servant has embarked on an unauthorised detour, or, as lawyers like to call it, a 'frolic of his own'. These cases have been given rise to a number of fine distinctions, the courts in some cases struggling to find liability, in others to avoid it, which it is not profitable here to examined. It remains true to say that, whatever exceptions or qualifications may be introduced, the underlying principle remains that a servant, even while performing acts of the class which he was authorised, or employed, to do, may so clearly depart from the scope of his employment that his master will not be liable for his wrongful acts."**

The English law, therefore, takes a softer attitude in cases where motor vehicles are involved in the matter of foisting of liability so far as the employer is concerned – the reason obviously being if the concerned employee acts in a manner contrary to the course of employment and on a 'frolic of his own' – why should the employer be made responsible; it seems logical – but obviously there are cases and cases on the basis wherefor the liability of the employer ought to be fixed. The Privy Council in Kooragang Investments Pty. Ltd., 1982 AC 462, attributed 'frolic of his own' to be the exonerating factor but this frolic has also to be considered from facts to facts in the matter of foisting of liability on to the employer. In any event, we need not devote much of out time to the excepted cases,

since we have in this country several legislation covering the 'excepted categories'. The recognition of broader approach, however, stands undisputed and has also our concurrence herewith.

Significantly, however, Mr. Malhotra with all the emphasis at his command and rather strongly commented upon the submissions of Mr. Bahuguna on the issue of award of compensation by reason of specific legislation in the country – in particular reference to Motor Vehicles Act and on a conjoint reading of the Second Schedule thereto, Mr. Malhotra contended that the quantum would be far in excess of the amount awarded by the high Court – submissions seems to be rather attractive: Motor Vehicles Act and the Second Schedule thereto cannot but be treated to be a guide in the matter of award of compensation and there cannot possibly be any doubt in regard thereto. We shall, however, be dealing with the issue slightly later in this judgment.

Turning attention however on to the issue of vicarious liability, one redeeming feature ought to be noticed at this juncture that to escort the children was the duty assigned to the two teachers and till such time thus the period of escorting stands over, one cannot but ascribe it to be in the course of employment – the two teachers were assigned to escort the students: the reason obviously being that the children should otherwise be safe and secure and it is the act of utter negligence of the two teachers which has resulted in this unfortunate tragedy and thus it is not gainsaid that the teachers were on their own frolic and the school had done all that was possible to be done in the matter – safety of the children obviously were of prima concern so far as the school authorities are concerned and till such time the children return to school, safe and secure after the picnic, the course of employment, in

our view continues and thus resultantly, the liability of the school.

A profitable recapitulation of facts depict that the criminal court has already found both the teachers guilty of utter negligence and convicted them under section 304-A, Indian Penal Code (which provides that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with…). We are not inclined to record anything contra, save what stands recorded by the District Court in the criminal proceeding but we are constrained to record our anguish over the conduct of the teachers escorting the students – even a simple rule or discipline and safety would have prompted the teachers not only not to go to the river where they went but nowhere near the river ought to have been the guiding factor – children are children: fun and frolic stand ingrained in them and it is school/teachers deputed for escorting ought to be reasonably careful since entrusted with the safety – this entrustment ought to have infused a sense of duty which should have prompted them to act not in the manner as they have so acted.

In view of the above, we are unable to record our concurrence with the submissions of Mr. Bahuguna that the doctrine of 'vicarious liability' cannot in any event be made applicable in the facts of the matter under consideration. Liability of the school, in our view, in the contextual facts cannot be shifted for any reasons whatsoever by reason of the factum of teachers being within the course of employment of the school at the time of the tragedy.

Next is the issue 'maintainability of the writ petition' before the High Court under Article 226 of the Constitution. The appellant though initially very strongly contended that while the negligence aspect

has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting, however, recording that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context reference may be made to two decisions of this court: The first in line, is the decision in Nilabati Behera v. State of Orissa, 1993 ACJ 787 (SC), wherein this court relying upon the decision in Rudul Sah v. State of Bihar, AIR 1983 SC 1086, decried the illegality and impropriety in awarding compensation in a proceeding in which court's power under Articles 32 and 226 of the Constitution stand invoked and thus observed that it was a clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of State's obligation unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stand restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except nothing the two decisions of this court as above and without expression of any opinion in regard thereto.

The decision of this court in D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating aggrieved to the remedies available in civil

law limits stands extended since Anand, J. (as his Lordship then was) in no uncertain terms observed:

> **"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim – civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."**

Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system – affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil courts obligation to award damages. As a matter of fact the decision in D.K. Basu, (1997) 1 SCC 416, has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of 'justice oriented approach'. Law courts will lose its efficacy if it cannot possibly respond to the need of the society – technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

The only other issue, thus left outstanding in the matter under consideration pertains to the quantum of compensation. It is at this juncture that we record our appreciation for the gesture of Mr. Bahuguna who at the very commencement of the hearing submitted that while the figure of Rs.5,00,000 compensation per child seems to be strangely absurd but he recommended a figure of Rs.2,00,000 per child as monetary compensation for the events that had taken place; compensation there cannot be any, for less monetary compensation, for the unfortunate death of one's own child – it cannot be termed to be a solatium. Unfortunately the situation in the facts of the matter does not warrant us to accept the same as a result of which we wish to deal with the matter in slightly more greater detail.

Mr. Bahuguna for the appellant with, however, strong vehemence contended that the High Court has totally misread and misapplied the principles of law in the matter of awarding compensation and in any event the quantum thereto has been fixed at an absurdly higher figure. The anguish of the High Court, Mr. Bahuguna contended, is understandable by reason of the factual import in the matter but that does not, however, mean and imply that a court of law would be guided by emotions and allow the sentiments to play a pivotal role in the matter of assessment of damages. It has been the contention of Mr. Bahuguna that there is not an iota of evidence as to the pecuniary loss for pecuniary benefit and as such the assessment of quantum has been totally arbitrary and in utter disregard of the known principles of law.

As noticed hereinbefore several judgments have been cited wherein the quantum of compensation varies between Rs.30,000 and Rs.1,50,000 but in every decision there was a factual basis for such an

assessment and there Is no denial of the same. But the adaptability of the multiplier method and its acceptability without any exception cannot just be given a go by. This court in a long catena of cases and without mincing words did apply the multiplier method to decide the question of compensation in the cases arising out of Motor Vehicles Act. It is in this context the view of British Law Commission may be noticed and which indicates "the multiplier has been, remains and should continue to remain, the ordinary, the best and the only method of assessing the value of a number of future annual sums". The actuarial method of calculation strictly speaking may not have lost its relevance but its applicability cannot but be said to be extremely restricted, said the British Commission. Lord Denning's observations in Hodges v. Harland & Wolff Limited, (1965) 1 All ER 1089, also seems to be rather apposite. Lord Denning observed that multiplier method cannot but be termed to be of universal application and as such it would meet the concept of justice in the event the same method is applied for determining the quantum of compensation. Incidentally in a very recent decision of this court in the matter of Lata Wadhwa v. State of Bihar, 2001 ACJ 1735 (SC) [of which one of us (U.C. Banerjee, J.) was a party] wherein a three-Judge Bench of this court has had the occasion to consider an award of a former Chief Justice pertaining to the assessment of compensation by reason of a huge accidental fire. Significantly, a writ petition was filed in this court and this court thought it expedient to have the claims examined by a former Chief Justice of the country and the latter duly and upon adaptation of multiplier method finalized the quantum of compensation which more or less barring some exceptions stands accepted by this court in the decision noticed above. In Lata Wadhwa's decision factual score records that while 150th British Anniversary of Sir Jamshedji Tata was being celebrated

on 3.3.89 within the factory premises at Jamshedpur and a large number of employees, their families including small children had been invited, a devastating fire suddenly engulfed the pandal and the area surrounding and by the time the fire was extinguished, a number of persons lay dead and many were suffering with burn injuries. The death toll reached 60 and the total number of persons injured was 113. The factual score in Lata Wadhwa's case further depicts that amongst the persons dead, there were 26 children, 25 women and 9 men and Lata Wadhwa, the petitioner in the matter, lost her two children, a boy and a girl as also her parents. It is on this score that the learned arbitrator had fixed in the absence of any material a uniform amount of Rs.50,000 to which again a conventional figure of Rs.25,000 has been added for determining the total amount of compensation payable. While dealing with the matter this court (Pattanaik, J. speaking for the Bench) observed:

> **"So far as the determination of compensation in death cases are concerned apart from the three decisions of the Andhra Pradesh High Court, which had been mentioned in the order of this court dated 15.12.1993, this court in the case of General Manager, Kerala State Road Trans. Corpn. V. Susamma Thomas, 1994 ACJ 1 (SC), exhaustively dealt with the question. It has been held in the aforesaid case that for assessment of damages to compensate the dependants, it has to take into account many imponderables, as to the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated**

remaining period of their life expectancy, the changes that the deceased might have got better employment or income or might have lost his employment or income altogether. The court further observed that the manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefits of the dependants, and thereafter it should be capitalized by multiplying it by a figure representing the proper number of years' purchase. It was also stated that much of the calculation necessarily remains in the realm of hypothesis and in that region arithmetic is a good servant but a bad master, since there are so often many imponderables. In every case, 'it is the overall picture that matters', and the court must try to assess as best as it can, the loss suffered. On the acceptability of the multiplier method, the court observed:

'The multiplier method is logically sound and legally well established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases'."

In the decision of Susamma Thomas, 1994 ACJ I (SC), this court in para 6 of the report observed:

"6. In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death. 'How much has the widow and family lost by the father's death? The answer to this lies in the oft-quoted passage from the opinion of Lord Wright in Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 at page 617, which says:

'The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.'

The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus 'except where there is express statutory direction to the contrary', the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Act must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages. [Per Lord Macmillan in Davies v. Powell, (1942) Act 601 p. 609]. Lord Wright in the same case said: 'The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on

the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death'. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami, 1958-65 ACJ 179 (SC), where the Apex Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand, the loss to the claimants of the future pecuniary benefit and, on the other, any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained."

Needless to say that the multiplier method stands accepted by this court in the decision last noticed and on the acceptability of multiplier method this court in para 11 had the following to state:

"It is necessary to reiterate that the multiplier method is logically sound and legally well established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say, 25 years of age at the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years– virtually adopting a multiplier of 45 –and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective

multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some decisions of the High Courts and of this court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that section 110-B of the Motor Vehicles Act, 1939, insofar as it envisages the compensation to be 'just' the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the high Court which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

In Lata Wadhwa's case, 2001 ACJ 1735 (SC), however, this court came to a conclusion that upon acceptability of the multiplier method and depending upon the facts situation, namely, the involvement of TISCO in its tradition that every employee can get one of his child employed in the company and having regard to multiplier of 15 the compensation was

calculated at Rs.3,60,000 with an additional sum of Rs.50,000 as conventional figure making the total amount payable at Rs.4,10,000 for each of the claimants of the deceased children.

The decision in Lata Wadhwa, 2001 ACJ 1735 (SC), thus, is definitely a guiding factor in the matter of award of compensation wherein children died under an unfortunate incident as noticed more fully hereinbefore in this judgment.

Having considered the matter in its proper perspective and the applicability of multiplier method and without even any further material on record we do feel it expedient to note that though Mr. Bahuguna attributed the quantum granted by the High Court as strangely absurd, we, however, are not in a position to lend our concurrence therewith. It is not that the award of compensation at Rs.5,00,000 can be attributed to be the resultant effect of either emotion or sentiments or the High Court's anguish over the incident. The High Court obviously considered the overall situation as regards social placements of the students. As stated hereinafter the school presently is one of the affluent schools in the county and fee structure and other incidentals are so high that it would be a wellnigh impossibility to think of admission in the school at even the upper middle class level. Obviously, the school caters to the need of upper strata of the society and if the Second Schedule of Motor Vehicles Act, can be termed to be any guide, the compensation could have been a much larger sum. Thus in the factual situation award of compensation at Rs.5,00,000 cannot by any stretch be termed to be excessive. Another redeeming feature of Mr. Bahuguna's submissions pertains to the theory of ability of pay: Audited accounts have been produced for the year 1995 depicting a situation, though not of having stringency but the situation truly cannot but be ascribed to be otherwise comfortable to

pay as directed by the High Court. The matter, however, prolonged in the law courts in the usual manner and it took nearly six years for its final disposal before this court–these six years, however, had rendered the financial stability of the school concerned in a much more stronger situation than what it was in the year 1995. the school as of date stands out to be one of the most affluent schools in the country as such ability to pay cannot be termed to be an issue in the matter and on the wake thereto we are not inclined to deal with the same in any further detail."

The Hon'ble Delhi High Court has held in **Iqubal Begum V. State of Delhi and others, 2001 ACJ 2033** that the High Court is duty bound to enforce the constitutional guarantees being the guardian of these rights. The Hon'ble Single Judge has made the following observations:-

"I am given to understand that the erring officers are being prosecuted and, therefore, it would not be proper for me to dwell at length upon the individuals acts of the policemen. Suffice it to say that prima facie on the material placed before me, the State/its functionaries have caused the death of the deceased, Sayyed Massom Ali, while he was in their custody and in a manner that the law has deprecated time and again. This, therefore, brings me to the question of dealing with the prayer of the petitioner regarding ex gratia compensation. Learned counsel for the petitioner has drawn my attention to the judgments of the Supreme Court in Nilabati Behera v. State of Orissa, 1193 ACJ 787 (SC); Sudha Rasheed v. Union of India, 1995 (1) SCALE 20 and Geeta v. Lt. Governor, 2000 ACJ 109 (Delhi). In yet another judgment of the Supreme Court in Ajab Singh v. State of Uttar Pradesh, 2000 ACJ 470 (SC), the Supreme Court thought it fit that a sum of Rs.5,00,000 would be adequate ex gratia compensation which compensation was without prejudice to the rights

of the legal representatives of the deceased to claim compensation in private law proceedings. The Supreme Court also in yet another judgment in Kalra's case thought it fit to award compensation of Rs.10,00,000. The reason for my drawing attention to the judgments and various pronouncements of the Supreme Court is to show that it is not necessary that the criteria laid down in fatal accident cases and allied matters for awarding compensation should be followed by courts in awarding ex gratia compensation in custodial death case. Such an interpretation would lead to treating citizens differently based on their economic strength when rights are violated by the State. The State and its agencies are bound to protect and safeguard the rights enshrined in the Constitution. The Constitution guarantees equality before law, economic strength of the deceased cannot be the sole criteria for awarding ex gratia compensation. It may, however, be a guiding factor.

In this case, the petitioner has already received a sum of Rs.50,000 by an order of the National Human Rights Commission which, according to me, is grossly inadequate. In any case, it cannot be argued that merely because the National Human Rights Commission has awarded a sum that it thought fit, the High Court in its power under Article 226 of the Constitution cannot arrive at a different decision. The powers of the High Court under Article 226 are for greater than that of National Human Rights Commission and that the High Court is duty-bound to enforce the constitutional guarantees being the guardian of these rights. I, therefore, in the facts and circumstances of this case, consider it appropriate to direct the respondent No.1, the State, to pay a sum of Rs.3,50,000 (Rupees three lakh fifty thousand) to the petitioner as compensation for the custodial death of her husband, Sayyed Massom Ali. This is, however, without

prejudice to the rights of the legal representatives of the deceased, Sayyed Massom Ali, to claim compensation in private law proceedings if so entitled in law against those found responsible for his death. The sum of Rs.50,000 (Rs. fifty thousand) already paid can be deducted from the above amount of Rs.3,50,000. The payment to be made to the petitioner within a period of four weeks from today and compliance reported to this court."

The Hon'ble Judge of the Jammu & Kashmir High Court in **Afroza V. State of Jammu & Kashmir and another, 2001 ACJ 2081** had awarded a sum of Rs. 2,70,000/- to a student of Class-VI who had suffered burn injuries due to electrocution. The Hon'ble Single Judge has made the following observations:-

"It is appropriate to notice that on the strength of the pleadings of the parties, I have come to an irresistible conclusion that the functionaries of the respondent No.1 have flagrantly breached the duty of care cast on them. I am also of the opinion that had the prudence worked with the functionaries of the respondent No.1 the accident could have been anticipated and the respondents being responsible for maintaining the transformer, it was obligatory upon them to take all the precautionary measures but they have failed to and such failure on the part of erring officials has the effect of endangering the lives of citizens on the one hand and on the other hand it has rendered the State liable to pay the compensation, but the lapses of the officials responsible for the accident appear to have gone unnoticed by the respondent No.1. How can the State make the public servants accountable unless the latter are dealt with, in an area which calls for intervention of the authorities at the helm and I make it clear that this pronouncement shall not debar the respondent State from holding an enquiry

to fix the responsibility in accordance with the procedure established by law on one who has erred."

The Hon'ble High Court of Orissa in **Sarla Sahu and others V. State of Orissa and others, 2002 ACJ 278** had awarded a sum of Rs.50,000/- towards compensation in an electrocution case. The Hon'ble Judges have made the following observations:-

"The law relating to award of compensation in electrocution cases as laid down by the Apex Court in the case of Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das, AIR 1999 SC 3412, is as follows (para 6):

"… It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy…"

It is further held by the Apex Court that the question of negligence of officials can be properly examined in a suit where correct facts can be established.

In another decision reported in Tamil Nadu Electricity Board v. Sumathi, AIR 2000 SC 1603, the Apex Court held as follows (para 9):

"In view of the clear proposition of law laid by this court in Sukamani Das case, AIR 1999 SC 3412, when disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right to life is

one of the basic human rights guaranteed under Article 21 of the Constitution."

Law is no more res integra that Article 226 of the Constitution does not case any limitation on the power of the High Court in exercise of jurisdiction thereunder though such power has to be sparingly exercised to meet the ends of justice. The efforts of the court while exercising the powers under Article 226 of the Constitution should not be one for finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, but to see whether it is possible to entertain his grievance if it is genuine."

The Hon'ble Supreme Court in **Madhya Pradesh Electricity Board v. Shail Kumari and others, 2002 ACJ 526** has held that if the energy transmitted causes injury or death of a human being who unknowingly gets trapped into it, then the primary liability to compensate the sufferer is that of the supplier of electric energy. The Hon'ble Judges of the Hon'ble Supreme Court have made the following observations:-

"It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury to or death of a human being who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his

private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of Torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as 'strict liability'. It differs from the liability which arises on account of the negligence or fault in this way, i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

The doctrine of strict liability has its origin in English common law when it was propounded in the celebrated case of Rylands v. Fletcher, 1868 LR (3) HL 330. Blackburn, J., the author of the said rule had observed thus in the said decision:

> **"The rule of law is that the person who, for his own purpose, brings on his land and collects and**

keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

There are seven exceptions formulated by means of case-law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger, i.e., if the escape was caused by the unforeseeable act of a stranger, the rule does not apply". [Vide page 535 Winfield on Tort, 15th Edn.]

The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Countries Leather plc, (1994) 1 All ER 53 (HL). The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this court in Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 and a Division Bench in Gujarat State Road Trans. Corpn. V. Ramanbhai Prabhatbhai, 1987 ACJ 561 (SC), had followed with approval the principle in Rylands v. Fletcher, 1868 LR (3) HL 330. By referring to the above two decisions a two-Judge Bench of his court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd., 2001 ACJ 428 (SC).

In M.C. Mehta v. Union of India, 1987 ACJ 386 (SC), this court has gone even beyond the rule of strict liability by holding that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to

any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher, 1868 LR (3) HL 330".

In the present case the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being 'an act of stranger'. The said exception is not available to the Board as the act attributed to the respondent No.3 should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant Board. In Northwestern Utilities Ltd. v. London Guarantee and Accident Co. Ltd., 1936 AC 108, the Privy Council repelled the contention of the defendant based on the afore cited exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree of care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

The Privy Council has observed in Quebec Railway, Light, Heat and power Company v. Vandry, 1920 Law Reporters Appeal Cases 662, that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found its way through the low tension cable into the premises of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed

to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

In W.B. State Electricity Board v. Sachin Banerjee, 2002 ACJ 337 (SC), the Electricity Board adopted a defence that electric lines were illegally hooked for pilferage purposes. This court said that the Board cannot be held to be negligent on the said fact situation but the question of strict liability was not taken up in that case.

The Hon'ble Gauhati High Court has held in **Fakir Chand V. State of Assam and others, 2002 ACJ 555** that there is no obstacle in the way of the writ Court to determine proper compensation when once a finding on negligence has been recorded.

The Hon'ble Karnataka High Court in **Karnataka Electricity Board V. Basavva and another, 2002 ACJ 1043** has held that generally live broken or hanging electric wires carrying high tension energy are not found and if such a thing happens, a prima facie inference can be drawn that there has been some carelessness in transmitting electric energy or in properly maintaining transmission lines. The Hon'ble Single Judge has made the following observations:-

"Coming to the care that appellant should normally maintain, the trial court considered that it is the duty of the Karnataka Electricity Board to maintain the electricity lines without causing any injuries or harm to the general public and protecting the life of the general public passing under it. Considering the various authorities cited from the Bar, the trial court found that the negligence on the part of the Electricity Board is presumed. Live broken electric wires or hanging electric wires carrying high tension energy are generally not found and if such thing happens, a prima facie inference can be drawn that there has been some

carelessness on the part of the appellant in transmitting electric energy or in properly maintaining the transmission lines. This inference is drawn by the trial court under rule 91 of the Indian Electricity Rules, 1956. The doctrine 'res ipsa loquitur' has two principles therein, namely, that the 'thing' causing the damage to be under the control of the defendant or his servants and that the accident must be such as would not in the ordinary course of things have happened without negligence.

In fact in the dictum of Syad Akbar v. State of Karnataka, 1980 ACJ 38 (SC), the above principles have been extended and relying upon the same, the trial court came to the right conclusion that on account of the negligent act of the appellant therein, grievous injuries were sustained by the plaintiff and consequently, the Board is liable to pay the compensation. The fact that she gave birth to a premature male child which died only on the reason of electricity shock is not in dispute. The further fact that her hands and fingers were amputated and all the fingers of her left leg were removed due to the burn injuries and plastic surgery was made to her left leg and left side face, she has lost all her feminine attraction to her husband and the other facts that she was unable to look after her six years old daughter and she was also unable to lead happy marital life with her husband are all not in dispute, nor it should be disputed. The medical certificate issued under Exh. P-5 by the hospital reads as follows:-

(1) Deep burns over the lower part of abdomen, thigh, lower limb and foot, only the great toe is good. Rest of toes gone.

(2) Right upper limb was detached from below elbow.

(3) Left hand has only little finger and thumb, but they are non-functioning. There is no nerve supply and no tendons. Middle three fingers were gangrenous during admission and so were amputated.

(4) Left side of mandible bone was exposed for which D.P. Flap was done.

(5) Patient was 8 ½ months pregnant during admission but she delivered in ward. Baby was fresh stillbirth.

There are permanent physical disabilities and they are also not in dispute, as they were identified by the medical experts who spoke about the same.

So far as the expense of Rs.80,000 is concerned, there is no serious dispute about the expenses incurred. On the question of damages of Rs.1,00,000 is concerned, in Manohar Lal Sobha Ram Gupta v. Madhya Pradesh Electricity Board, 1975 ACJ 494 (MP), the following dictum has been laid down:

> **"In our opinion, the loss to which section 1-A of the Fatal Accidents Act, refers is not limited to cash payments which the deceased may be expected to make for the support of the plaintiff, but it also includes loss of services. In Berry v. Humm & Co., (1915) 1 KB 627, it has been held that the gratuitous services rendered by wife in the home are equivalent to pecuniary benefit for which damages can be claimed under the Lord Compbell's Act. Same principle must be followed in awarding damages under section 1-A of the Fatal Accidents Act. We are, therefore, of opinion that the plaintiffs are entitled to be compensated for the loss of services of the deceased which she was rendering to them."**

The trial court also followed the dictum of Kerala State Electricity Board v. Kamalashy Amma, AIR 1987 Kerala 253: 1987 ACJ 251 (Kerala, to the following effect:

> **"A man of good health, doing business in textiles, provisions, getting average monthly income of Rs.1,000 besides Rs.75 being sitting fee as panchayath member, having 5 college going children and daughter was electrocuted sometime after 5.30 a.m. by a live wife snapped out of the cup joint on the electric pole, was lying on the road, while he was going to have dip in the canal, without knowing any premonition that he would be entrapped by death. The Electricity Board while admitting the death denied that it was due to electrocution and negligence and claimed that they maintain the electric installations adopting all the safety and precautionary measures. They denied the income of the deceased stated by the claimants. The trial court found negligence on the part of the Electricity Board. While determining the compensation, it had taken into account the factors, (1) the income of the deceased at the time of his death; (2) the extent of dependency on the income of the deceased; and (3) the life expectancy of the deceased and the period up to which the deceased would have continued to earn income. Principles of 'res ipsa loquitur' were applied. Compensation of Rs.75,000 was awarded, applying the multiplier 13, fixing life dependency at 75 years."**

In the case of Padma Behari Lal v. Orissa State Electricity Board, AIR 1992 Orissa 68: 1992 ACJ 554 (Orissa), the following dictum is laid down:

> **"A boy aged 22 years died due to electrocution by the hanging live wire, while he was coming on**

his bicycle, on the town road. The Electricity Board denied the rash and negligent conduct attributed against them. They contended that it was due to the detachment of live wire from the electric pole, by stormy weather on the fateful night. It was held though the onus to prove the rash and negligent conduct on the part of the Electricity Board rests on the claimant, in a case where the rule of evidence 'res ipsa loquitur' is applicable and cause of such accident is within the special knowledge of the respondent exists, the onus of non–existence of any negligence or rashness lies with the respondent. Considering the callous indifference of the respondents an ad hoc interim compensation of Rs.30,000 was awarded, with a direction to the respondent to settle the due compensation payable within a period of not more than 4 months, with liberty to the petitioner to take recourse in the court of law, thereafter. It was held that the determination of compensation would evidently depend upon various factors including the age of the deceased at the time of the accident, his earning capacity, expected longevity and the contribution he was making to the family out of his income, if any."

In the case of Asa Ram v. Municipal Corporation of Delhi, 1996 ACJ 20 (Delhi), a boy of 19 years working as welder/mistry, earning Rs.1,500 per month was electrocuted while he was climbing the staircase coming in contact with naked uninsulated live wire carrying high voltage electric current, separated from the main electric wire crossing the house and protruding across the staircase. The Electricity Board contended that the probability of cause of death was due to the deceased trying to fiddle with the electric mains with the help of wet bamboo stick, as there was no electricity in the premises and denied the averment

of protruding of any naked or uninsulated wire on the staircase. Held, the cause of death was due to the coming into contact with electric wire crossing from the house of the deceased and hanging on the staircase. Principles of 'res ipsa loquitur' applied and came to the conclusion that the death was due to negligence and carelessness of the Electricity Board. Compensation was awarded taking into consideration of, (1) pain and suffering; (2) pecuniary loss; (3) loss of amenities of life on account of loss of the dear one, by fixing longevity of life at 50 years. Applying the multiplier 30 for the age of 19 years of the deceased and deducting 1/3rd out of his wages or Rs.1,500 towards the personal expenses, awarded compensation of Rs.3,60,000. While making that award it was observed "it is the statutory duty of the DESU to ensure that every overhead line is covered with insulating material. Any overhead line erected over any part of the house, street, or public place should be protected with a device by which the line crossing that house should become harmless, in case it breaks".

In another case of Thressia v. Kerala State Electricity Board, 1987 ACJ 880 (Kerala), wherein it is laid down as follows: A man of 50 years, an agricultural labourer, having 7 children of whom 4 girls and 3 sons, electrocuted by coming into contact with a snapped live power line. The widow sent a letter to the High Court of Kerala, after a sustained but frustrated waiting for seven long years, hopefully expecting adequate compensation from the Electricity Board. The High Court treated that letter as an application under Article 226 of the Constitution and directed the respondents to submit counter-affidavit. The respondents while admitting the cause of death saying a coconut cadjan leaf fell on the live and snapped wire to which the victim came in contact and was electrocuted. Amicus curiae was appointed for the petitioner, who pointed out the

careless and negligent conduct of the Electricity Board in drawing the line, contrary to rule 74 of the Electricity Rules, which prescribe the breaking strength of the overhead line at not less than 350 kg. wire and where the voltage is low, the breaking strength at not less than 150 kg. Upholding that contention of the amicus curiae, the High Court relying on the principle 'res ipsa loquitur' drew the presumption of lack of proper care or negligence on the part of the Electricity Board. Taking into consideration of the sordid story of the petitioner and the income of the deceased at Rs.500 per month compensation of Rs.72,000 was awarded with liberty to the petitioner to take recourse to civil court.

In the case in Angoori Devi v. Municipal Corporation of Delhi, 1989 ACJ 173 (Delhi), a man aged about 40 years, earning Rs.600 per month by plying bullock-cart for carrying goods, having wife and 8 children was electrocuted at about 8.15 a.m. after receiving shock from the electric current leaked at a spot where temporary electric connection by means of loose and naked wires had been taken into a wooden shack installed on the roadside. The rainwater which collected around the shack got electrified. The Electricity Board while denying the cause of death from electrocution, pleaded that there was no negligence or flowing electricity in the shack. On recording the evidence of both the sides and after going into the exhibited documents, the High Court of Delhi held proved the cause of death is from electrocution due to leakage of electric power and assessed the compensation at Rs.1,29,600 considering life expectancy at 60 years, but limited the payment of compensation at Rs.1,00,000 as claimed in the petition. While making the award, the High Court took into consideration, (1) the wife deprived of satisfactory and normal married life; (2) the children deprived of proper

education and future prospects; (3) deprived of their means of livelihood.

In the case of Alka v. Union of India, 1995 ACJ 1254 (Delhi), a tender 6 years old girl, allured by the moving wheels of the motor of the water pump, put her hand on the belt of the pump, and sustained crush injury to her right hand fingers, resulted in amputation of her two fingers of the right hand. The respondents supplying water to the flats, left the running motor pump, unattended, unfenced and unguarded at the time of the accident. Reckless and negligent conduct was attributed against the respondents. It was denied contending that the accident was purely due to negligent act of the parents/children. On assessing the evidence and applying the principle 'res ipsa loquitur' the High Court found the negligence and reckless act on the part of the respondents, and held that extra care ought to have taken especially near a place where the children of tender age are playing, who do not realise the nature and consequences of the danger with running motor pump. Considering the (1) physical injury, agony, discomfort, inconvenience; (2) loss of amenities of life; (3) disfigurement where her prospects of marriage are impaired; (4) restricted movement and activity, an amount of Rs.1,50,000 was awarded as compensation."

The Hon'ble Karnataka High Court in **D. Chandrashekar V. Chairman-cum-Managing Director, Karnataka Power Transmission Corpn. Ltd. and another, 2002 ACJ 2014** had awarded a sum of Rs.2,00,000 in the case of electrocution. The court has further held that if the High Court is satisfied that injury has been caused on account of negligence of the other party, the High Court will grant compensation. The Hon'ble Single Judge has opined as under:-

"The respondents today, have file the statement of objections stating that the writ petition is not maintainable since the compensation, if any, is to be quantified on the basis of a trial in a regularly constituted suit. The respondents in support of their contention placed reliance on the decision of this court in W.P. No.33223 of 2001 disposed of on 3.9.2001. It is submitted that the said order was affirmed by the Division Bench of this court in W.A. No.5886 of 2001 disposed of on 29.10.2001. No doubt in the said decision, this court has taken the view that if at all if there is any remedy to claim compensation on the basis of the tortious act, it is only in the suit (original side). I am also in full agreement with the decision referred to by the learned counsel for the contesting respondents. But after taking into consideration, the facts of this case and the age of the boy and the injuries suffered by him, it is a fit case to award dome amount as compensation tentatively. Along with the statement of objections the respondents have also produced a sketch which shows the spot where the petitioner's son was electrocuted. The edge of the area which is marked with the red pencil is very near to the electric wire where one can easily come in contact with the same.

No doubt in the writ petition under Article 226 of the Constitution of India, it may not be possible for this court to quantify the compensation even assuming that the negligence if any on the part of the respondent is proved. But, at the same time, it cannot be said that this court can not grant some compensation if it is satisfied, prima facie, the injury has been caused on account of negligence of the other party."

The Hon'ble Karnataka High Court has again held in **Susheela and another V. State of Karnataka and others, 2003 ACJ 512** that the High Court can grant compensation while exercising jurisdiction

under Article 226 of the constitution of India if it is satisfied that injustice required to be remedied urgently. The Hon'ble Single Judge has observed as under:-

> **"In my view, since most of the facts are not in dispute and do not involve serious questions of fact, the relief sought for by the petitioners cannot be denied to them on the ground that this court should not exercise its power under Article 226 of the Constitution of India as the petitioners have a remedy open to them to enforce their legal rights by instituting appropriate proceedings before the civil court. It is true that the petitioners have a remedy before the civil court. However, in my view, that cannot be the sole ground to deny the relief to the petitioners in this petition. The facts of this case and the circumstances under which the petitioners have approached this court would compel this court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India. No doubt, it is well settled that in cases where serious disputed questions of facts which require investigation and recording of evidence, are involved, this court would not exercise its power under Article 226 of the Constitution; and direct the parties to enforce their rights before the civil court. As noticed by me earlier, it is not in dispute that Patil was murdered by wood smugglers on 15.9.1993. It is also not in dispute that he was so murdered while he was discharging his duties. As rightly contended by the learned counsel for the petitioners, none of the facts averred in the petition has been denied in the statement of objections. The only ground on which the prayer for the petitioners for payment of compensation and for that matter, even the request of the deceased petitioner No.1 for appointment on compassionate ground was denied was that the rules framed by the State do not permit for payment of compensation or to give appointment on compassionate ground to the wife of Patil, as he was**

only a daily wage employee and he was not entitled for regularization in the service as he came to be appointed subsequent to 1.7.84 and at the time o f his death, he had only put in 7 years, 2 months of service. It is necessary to point out that in para 3 of the statement of objections, extracted above, it is admitted that the name of deceased Patil was included in the list of martyrs maintained in the Department of Forest. It is further stated that in the absence of any rules providing for payment of compensation, in the fact situation, the respondents "are helpless in the matter to give any relief to the petitioners". At para 4 of the statement of objections, the respondents state that "they have got all the sympathy for all that what had come on the petitioner and her family due to the untimely demise of the said M.S. Patil". When this is the stand of the State in the statement of objections, in my view, this court will not be justified in refusing to grant relief to the petitioners on the ground that the petitioners have a remedy before the civil court. The respondents have the information with regard to the wages that was being paid to deceased Patil at the time of his death. There is also no serious dispute with regard to the age of deceased Patil. Under the circumstances, there should not be any difficulty for this court to assess the quantum of compensation, if this court takes the view that the petitioners are entitled for payment of compensation in a matter like this. The facts of this case indicate that the original petitioner No.1 was the wife and the petitioner No.2 is the aged mother of deceased Patil. During the pendency of this petition, the petitioner No.1 expired and her minor sons were brought on record. The fact that deceased Patil was working as a daily wage employ and drawing a meagre salary even according to the respondents, around Rs.25 per day, indicates the background, the social status and the helpless situation in which the family is placed on account of the untimely death of Patil. The Division

Bench of this court, in the case of Pushpaleela v. State of Karnataka, AIR 1999 Kant 119, has assessed the damages and awarded compensation to the victims of an Eye Camp, who have lost their eyesight on account of the negligence of the doctors while conducting Eye Camp. The Division Bench of this court also proceeded to hold on the basis of the report of the inquiry held, that there was negligence in conducting eye operations. Therefore, I am of the view that this court, in appropriate cases, depending upon the fact situation and to do justice to the parties, can and should exercise its power under Article 226 of the Constitution. The restriction imposed on the power of this court under Article 226 of the Constitution is a self-imposed restriction. Therefore, if this court, in a given case, is satisfied that the extraordinary facts of the case and the injustice done to the parties, require to be remedied urgently, this court cannot refuse to exercise its power under Article 226 of the Constitution on the ground that the parties have a remedy before the civil court. The power of this court under Article 226 of the Constitution of India is meant to be exercised to set right the injustice done to the parties and to give relief; and is not meant to be a dead letter in the Constitution. The facts of this case set out above, in my view, amply justify the exercise of power of this court under Article 226 of the Constitution to grant relief prayed for by the petitioners."

The Hon'ble Supreme Court has held in **H.S.E.B. and others V. Ram Nath and others, 2005 ACJ 342** that the writ is maintainable seeking compensation in the case of electrocution. The Hon'ble Division Bench has granted and up-held a sum of Rs.1,00,000/-, awarded by the Delhi High Court. Their Lordships have observed as under:

"It is submitted that these averments would show that there was s disputed question of fact as to whether or not the wires were touching the roof. We are unable to accept this sub mission. To the categoric averments set out hereinabove hat the wires had become very loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the fact that there is a deemed admission that the wires were drooping and touching the roofs.

The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high tension wire, he is bound to receive a serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorised constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, buy moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorised. In this case we do not find any disputed question of fact."

The Hon'ble Patna High Court in **Ram Swaroop Yadav V. Bihar State Electricity Board and others, 2005 ACJ 2043** had awarded a sum of Rs.2,00,000/- towards the compensation in the case of electrocution of an agriculturist working in his fields. The Hon'ble Single Judge has held as under:-

"From the conspectus of decisions of the Supreme Court referred to above, there is no difficulty in accepting the broad submission that without proving negligence, nobody is entitled for compensation and when the liability is denied on the ground that there was no negligence, or there is a disputed question of fact, remedy under Article 226 of the Constitution is not a proper remedy. Further, it is true that the right claimed by petitioner is not capable of being established in a summary proceeding under Article 226 of the Constitution of India and one has to bear in mind that the object of conferment of jurisdiction under the said Article is for enforcement and not for establishment of right. This is further a rule of discretion and not of exclusion of jurisdiction, hence this court in exercise of its power of judicial review is not incompetent to decide an issue of fact, which can be determined form the materials on record. Further, one cannot lose sight of the fact that right to life is a fundamental right guaranteed under supreme law of the country and when there is negligence on the face of it, it cannot be said that recourse must be had to suit. It is one thing to say that the writ petition be dismissed on the ground that same involves disputed question of fact, then to say that person claiming compensation be put to strict proof of the same.

Bearing in mind the principle aforesaid, I proceed to examine the facts of the present case. The respondents in their first counter-affidavit, tried to divert the issue by saying that as 33 K V A line is not passing over the field of petitioner, there was no occasion for the petitioner's son dying of electrical shock on account of snapping of the electric line. In my opinion, the Board which happens to be a statutory authority performing a public duty, ought to have been more hones and should have stated that instead of 33 K V A line, 11 K V A line was passing from over the field

where the accident took place which fact is disclosed only after a direction was given by this court to file further affidavit. Further, the assertion made by the petitioner that 33 K V A line was passing from over the field cannot be said to be without any substance as in the supplementary counter-affidavit itself respondents have clearly stated that the electric line started from 33/11 K V A from power sub-station. It is too much to expect from a citizen as to where this 33 K V A power line has come down to 11 K V A.

Not only this, but in the counter-affidavit also, respondents have not stated as to how the accident took place. In fact, respondents have not joined the issue on this question but their plea in the counter-affidavit is to put the petitioner to strict proof of its assertion. I am clearly of the opinion that the dispute if at all in the case has been raised for the sake of it, which can be decided in a writ application on the basis of the material on record. Petitioner has placed on record the report given to the police which shows that his son's body was found in the field of cauliflower and he died due to electrical shock. Inquest report and the post-mortem report in specific term show that the death had occurred due to electrical shock. Nothing has been placed on behalf of the respondents so as to cloud the assertion of the petitioner. No explanation has been put forth to controvert the petitioner's assertion that his son died on account of electrical shock due to snapping of the electrical wire on account of negligence of the respondents. In my opinion, in case the electrical wire snaps and falls on the ground, unless rebutted, an inference is irresistible that there has been carelessness and negligence on the part of the authority who had the responsibility to maintain it. The irresistible conclusion of the aforesaid discussion is that the petitioner's son had died of shock in his field on account of snapping of electrical wire due to

negligence of respondents and, therefore, he is entitled for the compensation.

In the case of Sukamani Das, (1999) 7 SCC 298, relied on by Mr. Dutta, a specific defence was raised that although proper care and precaution were taken but the conductor had snapped because of thunderbolt and lightning and in such a situation the Supreme Court held the writ application to be not an appropriate remedy and the issue cannot be determined on the basis of an affidavit as it involvers disputed questions of fact. There is no such pleading in the present case. Further, in case of Sumathi, (2004) 4 SCC 543, after referring to the decision in Sukamani Das (supra), Apex Court has clearly held that "it cannot be understood as leaving a few that in every case of tortious liability recourse must be had to suit". Thus, the decision of the Apex Court in case of Sukamani Das is clearly distinguishable whereas its decision in the case of Sumathi does not support the case of the respondents.

The Division Bench of Hon'ble Orissa High Court in **Nirmala Nayak and others V. Grid Corporation of Orissa Ltd. and others, 2007 ACJ 283** has held that writ for compensation will be maintainable in the case of electrocution. Their Lordships have held as under:-

"The learned counsel for the petitioners highlighting the admitted position gathered from the respective pleadings submitted that the deceased died at the place on the path near the homestead of Babaji Nayak when he was coming to call him in the early morning of the fateful day. It is also an undisputed position that he was electrocuted by live wire lying there which snapped sometime in the previous night due to storm and rain. He submitted that the only contention which the opposite parties advanced to wriggle out of the situation is that in the pre-monsoon

check no defect in the supply line was detected and the snapping of the live wire was only due to violent storm and rain in the night which was act of God and over that they had absolutely no control and such eventuality is not foreseeable and is very remote, cannot be a defence to relieve the Corporation of its liability. The Corporation is engaged in the supply of electricity taking statutory responsibility for the same. If the energy causes death or injury of any individual who unknowingly comes in contact with it, the primary liability to compensate the sufferer is that of the supplier of the energy so long as the voltage of the electricity energy transmitted through the wires is potentially of dangerous dimension. It is the added duty of the Corporation through its officials or managers in charge of the supply to adopt and take all safety measures to prevent escape of such energy and/or to see that wire snapped would not remain alive on the road or premises as the users of the road and such premises would definitely be under peril. It is look out of the Corporation to install device to disrupt supply of energy automatically in case there is snapping or to manually suspend supply of energy if such device was not there to automatically disrupt the supply. It is submitted by learned counsel for the opposite parties that no such automatic device was installed and since there was no knowledge of such snapping of wire in the night by the violent storm and rain the supply of energy was also not disrupted or suspended. When it is admitted that there was storm and heavy rain, that resulted in the snapping of live wire from the pole, not disrupting supply is manifestation of utter and inexcusable negligence of the officials or the managers of the system which ultimately caused loss of life of a poor labourer who was the sole bread-winner of his family of 5 members.

The argument that the officials had no knowledge of such snapping of wire anywhere and for that they did not disrupt or disconnect supply does not and cannot convince us for the reason that any prudent man would normally foresee or apprehend that there might be snapping of wire by fall of trees uprooted or branches wrenched falling on the supply line and that if such an idea did not strike to the person or persons managing such highly dangerous business of supply of high velocity electric energy, they have to pay for that by compensating the person who was electrocuted due to their utterly negligent attitude and lamentable lack of concern.

The learned counsel for the petitioner cited before us a decision of the Supreme Court reported in Madhya Pradesh Electricity Board v. Shail Kumari, 2002 ACJ 526 (SC), wherein in para 8 the Supreme Court observed that:

> **"(8) Even assuming that all measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of Torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as 'strict liability'. It differs from the liability which arises on account of negligence or fault in this way, i.e., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict**

liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

In para 9 of the said judgment the Apex Court observed:

"(9) The doctrine of strict liability has its origin in English common law when it was pronounced in the celebrated case of Rylands v. Fletcher, (1868) LR 3 HL 330. Blackburn, J., the author of the said rule had observed thus in the said decision:

'The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escapes'."

In para 10 the Apex Court while dealing with the exception to the law of 'strict liability' has observed that:

"(10) There are seven exceptions for formulated by means of case-law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this.

'Act of stranger, i.e., if the escape was caused by the unforeseeable act of a stranger, the rule does not apply'."

It is needless to say that the rule of 'strict liability' has been applied and followed in many subsequent decisions in England and the said principle has gained approval in India and there is catena of decisions of the High Courts. The Constitution Bench of Supreme Court in the case of Charan Lal Sahu v. Union of India, (1990)

1 SCC 613 and the Supreme Court in Gujarat State Road Trans. Corpn. V. Ramanbhai Prabhatbahi, 1987 ACJ 561 (SC), had followed with approval the principle in Rylands v. Fletcher, (1868) LR 3 HL 330. By referring to the above decisions a two-Judge Bench of the Supreme Court in Kaushnuma Begum v. New India Assurance Co. Ltd., 2001 ACJ 428 (SC), has reiterated the same principle. In para 12 of Shail Kumari's case, 2002 ACJ 526 (SC), the Apex Court observed:

> **"(12) In M.C. Mehta v. Union of India, 1987 ACJ 386 (SC), this court has gone even beyond the rule of strict liability by holding that 'where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher, (1868) LR 3 HL 330'."**

The Supreme Court in the judgment of Madhya Pradesh Electricity Board v. Shail Kumari, 2002 ACJ 526 (SC), relied on a decision of Privy Council in Quebec Railway, Light, Heat and Power Co. Ltd. v. Vandry, (1920) AC 662 where it is observed that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and the high tension current found its way through the low tension cable into the premises of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road.

In M.C. Mehta v. Union of India, 1987 ACJ 386 (SC), the Supreme Court has gone beyond the rule of 'strict liability' by holding in para 31 that –

> **"…where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and all such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher."**

The learned counsel for the opposite parties strenuously urged that in view of the judgment of the Apex Court reported in Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das, AIR 1999 SC 3412 and West Bengal State Electricity Board v. Sachin Banerjee, 2002 ACJ 337 (SC), the petitioner on the face of the disputed facts should have approached the civil court instead of filing of a petition under Article 226 of the Constitution. No doubt, disputed questions of fact cannot be determined in a writ petition filed under Article 226 of the Constitution and hence there can be no other remedy available except to file a civil suit as there only the facts can be determined on the basis of evidence, but the decisions of the Apex Court which we have extensively quoted in the preceding paras of the judgment the rule of strict liability has been considered and applied. The rule of strict liability was neither agitated nor considered in the matter of award of compensation to the victims in the case of Chairman, Grid Corporation of Orissa Ltd. (spura) and West Bengal State Electricity Board (supra).

The learned counsel for the petitioners, on the other hand cited before us a decision reported in Executive Engineer, Electricity (M&RE) Division, Awantipora, Anantnag v. Mohammad Ashraf Bhat, 2000 ACJ 1199 (J&K), wherein the High Court in a case of death due to electric shock, came to hold that in claim for compensation and employment to the son of the deceased, High Court has jurisdiction to entertain the petition and deal with it appropriately. The Apex Court also in the case of M.S. Grewal v. Deep Chand Sood, 2001 ACJ 1719 (SC), observed as under (para 26):

> **"Next is the issue of 'maintainability of the writ petition' before the High Court under Article 226 of the Constitution. Appellant though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the civil law and thus the civil court's jurisdiction ought to have been invoked rather by way of writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting, however, recording that the law courts exist for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context reference may be made to two decisions of this court: The first in line is the decision in Nilabati Behera v. State of Orissa, 1993 ACJ 787 (SC), wherein this court relying upon the decision in Rudul Sah v. State of Bihar, AIR 1983 SC 1086, decried the illegality and impropriety in awarding compensation in a proceeding in which court's**

power under Articles 32 and 226 of the Constitution stands invoked and thus observed that it was clear case for award of compensation to the petitioner for custodial death of her son. It is undoubtedly true, however, that in the present context, there is no infringement of State's obligation unless of course the State can also be termed to be a joint tortfeasor, but since the case of the parties stands restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except nothing the two decisions of this court as above and without expression of any opinion in regard thereto."

The Apex Court in the decision in D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, considered this question and this decision of the Apex Court has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating aggrieved to the remedies available in the civil law limits stands extended since Anand, J. (as his Lordship then was) in no uncertain terms in para 45 observed that:

"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of offender cannot give much solace to the family of the victim–civil action for damages is a long-drawn and cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members

of the deceased victim, who may have been the bread-winner of the family."

In this connection, we would like to profitably quote a para from a decision reported in the case of Ramesh Singh Pawar v. Madhya Pradesh Electricity Board, 2005 ACJ 894 (MP) [Sic. M.S. Grewal v. Deep Chand Sood, 2001 ACJ 1719 (SC)]:

> **"Currently judicial attitude has taken a shift from the old Draconian concept and the traditional jurisprudential system–affectation of people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of 'justice oriented approach'. Law courts will lose their efficacy if they cannot possibly respond to the needs of the society–technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."**

After hearing both learned counsel and elaborately considering the questions raised by them as discussed above, we have not the slightest hesitation in coming to a clear and cogent conclusion that this writ petition under Article 226 of the Constitution is maintainable and the opposite parties (Corporation) is liable on the principle of strict liability

to pay compensation to the petitioners in the present case."

The provisions of Article 21 of the Constitution of India have been grossly infringed by the Board.

It is evident that Shri Laiq Ram came in contact with live electric wires which were almost touching the ground and the cause of accident can safely be attributed to the omission/commission of the Board. It is a duty cast upon the Board to maintain the electric lines without causing any injury or harm to the general public.

There is carelessness and negligence on the part of the Board while maintaining the electric wires. In the present case a number of documents have been filed alongwith the writ petition. None of the documents have been controverted by the Board including the public documents issued by the Ayurvedic Medical Officer and A.S.I. alongwith communication dated 14th August, 2001 sent by the SDM to the Chief Electrical Inspector.

The upshot of the above discussion is that Shri Laiq Ram had died due to the negligence of the Board of electrocution on 23rd June, 2001. The Board was negligent in maintaining its live wires passing over the land of the deceased Shri Laiq Ram. It is a fit case where the principle of res ipsa loquitur is attracted. The Chief Electrical Inspector is remiss in discharge of his statutory duties.

It has come in the record that the income of the deceased was about Rs.10,000/- per month. This amount seems to be exaggerated, but it can safely be presumed that he was earning about Rs.6000/- per month and 2/3rd amount has to be deducted from this amount towards personal expenses of the deceased. The monthly dependency will be about Rs.4000/- and the annual dependency will be Rs.48,000/-. This amount is to be multiplied by an appropriate multiplier. This Court can

take assistance of structured formula as prescribed under the Motor Vehicles Act, 1988. The appropriate multiplier as per the structured formula between the age of 50 and 55 will be 8. Accordingly, the petitioner is entitled to a sum of Rs.3,84,000/- as compensation.

Consequently, the writ petition is allowed. The Board is directed to pay a sum of Rs.3,84,000/- to the petitioner within a period of eight weeks from today. This amount will be apportioned among all the legal heirs, but the major son(s) will not get any amount. This amount of Rs.3,84,000/- will also carry interest at the rate of 9% per annum from the date of the filing of the petition i.e. 23rd April, 2002 till the date of payment. There shall be no order as to costs.

(Rajiv Sharma)
Judge

July 13, 2007.
(sck).